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# "A Letter To Textbook Authors About The Negotiation Process"

By Michael R. Lennie

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Michael R. Lennie is an attorney licensed in California and New York who devotes more than half his practice to the representation of authors throughout the Country. He may be contacted at his offices by dialing 800-TAA-LAWS or (619) 749-1033. (Be sure to advise that you are a TAA member for member discounts.)

My Firm negotiates a lot of author contracts with publishers. We are always able to negotiate a significantly improved contract. We would be hard pressed to make the contract worse from the author's perspective. The standard contract is drafted by the publisher's attorneys. The publisher pays its attorneys to draw up clauses that protect the publisher, not the author. This is only natural.

Textbook authors are wonderful clients. They are intelligent, focused, energetic people at the top of their field. I like the way their minds work. I like the fact that they take good notes. But when it comes to negotiating contracts their intelligence seems to evaporate and they display all the sophistication of Bambi.

I have meant for years to draw up a standard letter to send to authors who hire my firm to negotiate their contracts. The purpose of this letter is to help the author learn a little more about the negotiation process so they can help me negotiate a better contract. Here goes. Dear Author:

I am honored by your selection of my firm to negotiate your book contract with Publishing Co. I will give your contract my careful attention and, with your help, make every effort to negotiate a contract you will be happy with.

In the following paragraphs I will attempt to give you the information you need to help me negotiate a fair contract.

#### The Standard Contract

Unless you are a major author who over the years has reached an accommodation with your publisher, you will be offered the Standard Contract by your publisher. The standard contract is drafted by the publisher's attorneys to protect the publisher. This is only natural. The result is a contract that is grossly one-sided. THEY DON'T EXPECT YOU TO SIGN IT. THEY EXPECT YOUTO NEGOTIATE. It will be our purpose to revise the contract to provide a more balanced agreement. But first let me point out a few of the one-sided clauses in the standard contract.

# 1. The Competing Works Clause:

The Standard Contract's competing works clause prohibits the author from in any way participating in a work which may interfere in or diminish the sales of the work without the written consent of the publisher. Use of the word "may" entrusts the publisher with substantial discretion to decide whether you will be able to publish future books in your field. There is no similar restriction on the publisher. Publishers may and often do publish two or sometimes more books which directly compete for the same market.

# 2. The Revision Clause:

Textbooks are topical books requiring periodic revision to remain saleable. The frequency of revisions is determined by the subject matter and the frequency of revision of competing texts. Although the

author grants copyright to the publisher for his or her lifetime plus 50 years, whether and when the work will be revised is left entirely to the discretion of the publisher. The Standard Contract does not revert the copyright to the author if the book is not revised regularly.

## 3. The Right of Assignment:

Almost every standard contract provides at the end of the contract words to the effect "This Agreement shall bind the Author his or her heirs, executors and administrators and the Publisher, his successors and assignees." This language means the publisher may turn over its rights and obligations to another publisher without the consent of the author, while the author is prohibited from similarly turning over his or her duties or any part of the duties to another author.

## 4. The Satisfactory Clause:

The second or third paragraph of the Standard Contract is usually entitled "Submission of Manuscript" and state the manuscript must be "satisfactory [or "acceptable"] in form and content." This seemingly innocuous language means the author must write the entire manuscript (often including significant ancillaries) before the publisher "accepts" and is thereafter contractually obligated to publish the manuscript.

#### Selecting A Professional Negotiator

More and more authors like yourself are turning to professional negotiators (attorneys or agents) to do their bidding with the publishers. A good attorney or agent knows the legal meaning of the contract, has files full of standard and revised contracts the publisher has entered with other authors, and has language for revised clauses that

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